IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.406 OF 2005
IN
SUIT NO.2009 OF 1997

Arvind Goenka Plaintiff

versus

Pennzoil Product Co. and others Defendants

ALONG WITH

NOTICE OF MOTION NO.1813 OF 1997
IN
SUIT NO.2009 OF 1997

Arvind Goenka Plaintiff

versus

Pennzoil Product Co. and others Defendants

Mr.D.R.Zaiwala i/by Mulla & Mulla for plaintiff.

Mr.E.P.Bharucha with Indranil Deshmukh i/by Amarchand & Mangaldas & Suresh A. Shroff & Co. for defendants.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 24th June 2005

PC :

1. Notice of Motion No.406 of 2005 is not pressed in the light of orders that I propose to pass on Notice of Motion No.1813 of 1997 taken

out by the plaintiff in this suit.

2. The plaintiff - an individual share holder in a company (defendant no.2) has instituted present suit for specific performance of an agreement at Exhibit-C and alternatively for money claims/damages vide prayer clauses (b) and (c) of the plaint.

3. The Notice of Motion is taken out for injunction during pendency of the suit restraining the defendants, their servants and agents from in any manner selling, transferring, alienating, encumbering, surrendering or relinquishing their rights and interest or in any manner parting with possession of or creating any third party rights or interests in (i) 4,64,198 shares in the capital of the 2nd defendant company transferred by the Goenkas to the defendant no.1 or their nominees, as per particulars set out in Exhibit-U to the plaint; (ii) the two immovable properties viz. Sewri Premises and Apeejay House situate at Mumbai more particularly described in the Schedule Exhibit-B to the plaint. The second prayer is for appointment of Court Receiver in respect of very same shares and immovable properties.

4. At ad-interim stage in this Notice of Motion, statement of Mr.Bharucha appearing for defendants was recorded to the effect that the premises at Apeejay House more particularly described at Exhibit-B to the plaint, would not be surrendered nor any third party rights would be inducted therein or rights created in favour thereof. Court Receiver was appointed insofar as property at Sewri, Mumbai. The plaintiffs were given liberty to enter into an agency agreement with regard to this property.

5. Mr.Zaiwala, learned senior counsel appearing for plaintiff submits that agreement at Exhibit-C is clear inasmuch as upon transfer of shares in favour of the defendants - multinational company, the plaintiff was entitled to the sums as consideration thereof. He took me through the clauses including benefits conferred and states that in the light of the fact that the plaintiff has done all that is necessary on his part under this agreement, the defendants are liable to perform their part. He states that for safeguarding the rights of plaintiff it is necessary that appropriate orders be passed so that the property is preserved till the suit is

heard and disposed off. In other words, the subject matter of the agreement being shares and immovable properties, both need to be preserved and protected by appropriate interlocutory orders.

6. Mr.Bharucha, learned senior counsel appearing for defendants states that the minutes of the agreement (Exhibit-C) are not such as would confer any rights in favour of plaintiff but are intended actions based upon which parties were to exchange further documents and as long as further documents are not exchanged, it cannot be said that that there is any agreement or understanding. Further, when it comes to properties it was clearly provided that that was not something which was part of consideration and in that behalf he took me through various clauses of the agreement including clause-6. He submits that there is serious dispute as to whether plaintiff would be entitled to specific performance of this agreement.

7. Having considered these submissions, in my view, all that needs to be done is to appropriately modify the ad-interim order with regard to Apeejay House property. This property

admittedly is a tenanted property. The apprehension of the plaintiff is that the defendants would surrender their tenancy rights to the landlord and thereafter rights of the plaintiff in these premises would get defeated and frustrated. It is pointed out that the defendants have acquired premises at Andheri and are to shift there. Mr.Bharucha states that there is no basis for such an apprehension inasmuch as defendants are ready and willing to join the plaintiff in any act of surrender of the tenancy rights. He submits that the tenancy rights have not been surrendered or relinquished and are subsisting. He further states that defendants are in physical possession of Apeejay House property. He also states that rent and outgoings in respect of this property are being paid and will continued to be paid for a period of three months. He has no objection if during this period the plaintiff initiates efforts on his own or jointly with the defendants and approaches the landlord for surrender of tenancy rights or transfer of rights in his favour. In either event, Mr.Bharucha submits that the defendants would not make any claim and they would not have any objection if the consideration is paid or made payable in favour of plaintiff.

8. Mr.Zaiwala states that this partially protects interest of plaintiff inasmuch as if surrender of the tenancy rights or relinquishment thereof does not satisfy the claim of plaintiff in the suit insofar as the shares are concerned, then even the alternate prayer of damages which is made in the plaint, would not fructify. In other words, he states that money claim of the plaintiff is something which arises out of obligations under this agreement and atleast to the extent of the amounts which are retained by the defendants, the plaintiff would be entitled to a decree. Apart from this there is a substantive claim for damages as alternate to the relief of specific performance. For these money claims, he seeks security from the defendants. In my view, that relief is not the subject matter of present Notice of Motion. Neither the disposal of present Notice of Motion nor the transfer/surrender of the tenancy rights would prejudice in any manner the plaintiff from approaching this Court with a fresh Notice of Motion and applying for reliefs of attachment before judgement of the properties belonging to the defendants upon their failure to furnish security or such reliefs as are permissible in

law. Reserving that right and keeping contentions of both sides open in that behalf, the present Notice of Motion is disposed of by following order.

9. ORDER :- A) Ad-interim order passed by this Court to continue save and except Apeejay House premises;

B) In respect of Apeejay House premises it would be open for the plaintiff to approach the landlord for either transferring the tenancy rights or for surrendering the same. The defendants shall execute such letters/documents as are necessary to enable the plaintiff to approach the landlord and obtain necessary permission;

C) The plaintiff would be entitled to such consideration as is payable in respect of either options and the defendants would not claim any amount in that behalf from the plaintiff;

D) The defendants to continue to pay the rent and outgoings in respect of Apeejay House premises for a further period of three months to enable the plaintiff to approach the landlord.

(S.C.DHARMADHIKARI, J.)